IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

Writ Petition Nos.293, 4649, 4664, 5038, 5178, 5267, 6918, 6932, 6937 and 6982 of 2004

W.P.No.293 of 2004 :

Between:

M/s A.V.U.Engineers Pvt. Ltd., situated at A-15, A.P.I.E., Balanagar, Hyderabad, rep by its Managing Director, Mr.Karamchand Rana

..... PETITIONER

AND

1 The Appellate Dy.Commissioner (CT), Hyderabad Rural

Division, Hyderabad.
2 The Commercial Tax Officer, Hydernagar Circle,

Balanagar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of writ of mandamus, declaring the impugned order dated 16-10-2003 passed by the 1st respondent in G.I.No.R/585/2001 as illegal, unjustified in the facts and circumstances of the case.

Counsel for the Petitioner : MR.B.SRINIVAS

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

W.P.No. 4649 of 2004 :

Between:

M/s.Manjunatha General Traders, Nallacheruvu, Nallacheruvu Mandal, Anantapur District,

rep., by its Proprietor Sri P.V.S.Anjaneyulu.

..... PETITIONER

AND

1 The Appellate Deputy Commissioner (C.T.), Kurnool

Division, D.No.43/253-D8,
Sankalbagh, N.R.Pet, Kurnool.

2 The Commercial Tax Officer, Kadiri, Anantapur District,

A.P.

3 The Commercial Tax Officer, Hindupur, Anantapur

District, A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly in the nature of mandamus directing the First Respondent Appellate Authority to take on file the Appeal filed by the petitioner relating to the Assessment Year 2000-2001 A.P.G.S.T., in S.No.270/2003-2004 and decide the same on merits without going into the question of limitation, or alternatively to direct the third respondent who is the present assessing authority of the petitioner to reopen the assessment for the Assessment Year 2000-2001 A.P.G.S.T. and receive the Certificates to be filed by the petitioner and grant necessary relief according to Law

Counsel for the Petitioner : MR.G.NARENDRA CHETTY

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

W.P.No. 4664 of 2004 :

Between:

M/s.Sri Mahalakshmi Traders, Nallacheruvu, Nallacheruvu Mandal, Anantapur district, rep.by its Proprietor,
Sri P.Nagesh Kumar.

..... PETITIONER

AND

1 The Appellate Deputy Commissioner (C.T) Kurnool

Division, D.No.43/253-D8, Sankarbagh, N.R Pet
Kurnool.

2 The Commercial Tax Officer, Kadiri, Anantapur District

A.P.

3 The Commercial Tax Officer, Hindupur, Anantapur

District A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly in the nature of Mandamus directing the First respondent, Appellate Authority to take on file the Appeal filed by the Petitioner relating to the Assessment Year 2000-2001 A.P.G.S.T in S.No.266/2003-2004 and decide the same on merits without going into the question of limitation, or alternatively to direct the Third respondent who is the present assessing authority of the Petitioner to re-open the assessment for the Assessment Year 2000-2001 A.P.G.S.T and receive the Certificates to be filed by the Petitioner and grant necessary relief according to law.

Counsel for the Petitioner : MR.G.NARENDRA CHETTY

Counsel for the Respondents : GP FOR COMMERCIAL TAX

W.P.No. 5038 of 2004 :

Between:

M/s Snehit Enterprises, Nallacheruvu , Nallacheruvu Mandal, Anantapur District, rep.by its Proprietor

Sri P.Ramnath.

..... PETITIONER

AND

1 The Appellate Deputy Commissioner (CT),
Kurnool Division, D.No.43/253-D8, Sankalbagh
N.R.Pet, Kurnool.

2 The Commercial Tax Officer,
Kadiri, Anantapur District.

3 The Commercial Tax Officer,

Hindupur, Anantapur District, A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or Direction more particularly in the nature of Mandamus direction the First Respondent Appellate Authority to take on file the Appeal filed by the Petitioner relating to the Assessment Year 2000-2001 APGST in S.No.262/2003-2004 and decide the same on merits without going into the question of Limitation, or alternatively to direct the Third Respondent who is present assessing authority of the petitioner to re-open the assessment for the Assessment Year 2000-2001 APGST and receive the Certificates to be filed by the Petitioner and grant necessary relief according to law.

Counsel for the Petitioner : MR. G.NARENDRA CHETTY

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

W.P.No. 5178 of 2004 :

Between:

M/s. Sri Tirumala Srinivasa Traders, Gandlapenta, Gandlapenta Mandal, Ananthapur District,
rep., by its Proprietor, Sri D. Nataraj.

..... PETITIONER

AND

1 The Appellate Deputy Commissioner [CT] Kurnool

Division, D.No.43/253-D8, Sankalbagh,
N.R. Pet, Kurnool.
2 The Commercial Tax Officer, Kadiri, Ananthapur, A.P.
3 The Commercial Tax Officer, Hindupur, Ananthapur

District, A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or Direction more particularly in the nature of Mandamus directing the First Respondent, Appellate Authority to take on file the Appeal filed by the Petitioner relating to the Assessment year 2000-2001 APGST in S.No.268/2003-2004 and decide the same on merits without going into the question of limitation, or alternatively to direct the third respondent who is the present

assessing authority of the petitioner to reopen the assessment for the Assessment Year 2000-2001 APGST and receive the Certificates to be filed by the Petitioner and grant necessary relief according to Law.

Counsel for the Petitioner : MR.G.NARENDRA CHETTY

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

W.P.No. 5267 of 2004 :

Between:

M/s.Sri Tirumala Srinivasa Traders, Gandlapenta, Gandlapenta Mandal, Anantapur District, rep., by its Proprietor Sri D.Nataraj.

..... PETITIONER

AND

1 The Appellate Deputy Commissioner (C.T.), Kurnool

Division, D.No.43/253-D8, Sankalbagh,
N.R.Pet, Kurnool.

2 The Commercial Tax Officer, Kadiri, Anantapur Dist.,A.P.

3 The Commercial Tax Officer, Hindupur, Anantapur

District, A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly in the nature of mandamus directing the First Respondent, Appellate Authority to take on file the appeal filed by the petitioner relating to the Assessment Year 2000-2001 C.S.T. in S.No.264/2003-2004 and decide the same on merits without going into the question of limitation, or alternatively to direct the Third Respondent who is the present assessing authority of the petitioner to re-open the assessment for the Assessment Year 2000-2001 C.S.T., and receive the declaration forms to be filed by the petitioner and grant necessary relief according to law.

Counsel for the Petitioner : MR.G.NARENDRA CHETTY

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

W.P.No. 6918 of 2004 :

Between:

M/s. Sri Satyasai Baba Traders, Nallacheruvu,

Nallacheruvu Mandal,
Anantapur District rep by Proprietor S. Rajagopal.

..... PETITIONER

AND

1 The Appellate Deputy Commissioner (C.T.), Kurnool

Division, D.No.43/253-D8, Sankalbagh,
N.R.Pet, Kurnool.

2 The Commercial Tax Officer, Kadiri, Anantapur District,

A.P
3 The Commercial Tax Officer, Hindupur, Anantapur

District, A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or Direction more particularly in the nature of Mandamus directing the First Respondent, Appellate Authority to take on file the Appeal filed by the petitioner relating to the Assessment Year 2000-2001 C.S.T. in S.No.265/2003-2004 and decide the same on merits without going into the question of limitation, or alternatively to direct the Third Respondent who is the present assessing authority of the petitioner to re-open the assessment for the Assessment year 2000-2001 C.S.T. and receive the declaration forms to be filed by the petitioner and grant necessary relief according to law.

Counsel for the Petitioner : MR.G.NARENDRA CHETTY

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

W.P.No. 6932 of 2004 :

Between:

M/s. Pawan Enterprises, Nallacheruvu, Nallacheruvu Mandal, Anantapur District, rep. by its Proprietor

Sri S. Radhkrihsna Murthy.

..... PETITIONER

AND

1 The Appellate Deputy Commissioner (C.T), Kurnool

Division, D.No.43/253-D8, Sankalbagh,

N.R.Pet, Kurnool.
2 The Commercial Tax Officer, Kadiri, Anantapur District,

A.P.
3 The Commercial Tax Officer, Hindupur, Anantapur

District, A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or Direction more particularly in the nature of Writ of Mandamus directing the First Respondent, Appellate Authority to take on file the Appeal filed by the Petitioner relating to the Assessment Year 2000-2001 A.P.G.S.T in S.No.269/2003-2004 and decide the same on merits without going into the question of limitation, or alternatively to direct the Third Respondent who is the present assessing authority of the Petitioner to re-open the assessment for the Assessment Year 2000-2001 A.P.G.S.T. and receive the Certificates to be filed by the Petitioner and grant necessary relief according to Law.

Counsel for the Petitioner : MR.G.NARENDRA CHETTY

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

W.P.No. 6937 of 2004 :

Between:

M/s Pawan Enterprises, Nallacheruvu, Nallacheruvu Mandal, Ananthapur District, represented by its Proprietor,
Sri S.Radha Krishna Murthy.

..... PETITIONER

AND

1 The Appellate Deputy Commissioner (C.T.) Kurnool

Division, D.No.43/253-D8, Sankalbagh,
N.R.Pet, Kurnool.
2 The Commercial Tax Officer, Kadiri, Anantapur District.
3 The Commercial Tax Officer, Hindupur, Ananthapur

District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or Direction more particularly in the nature of

Mandamus directing the First Respondent, Appellate Authority to take on file the Appeal filed by the Petitioner relating to the Assessment Year 2000-2001 C.S.T. in S.No.271/2003-2004 and decide the same on merits without going into the question of limitation, or alternatively to direct the Third Respondent who is the present assessing authority of the Petitioner to re-open the Assessment for the Assessment Year 2000-2001 C.S.T. and receive the declaration forms to be filed by the Petitioner and grant necessary relief according to Law.

Counsel for the Petitioner : MR.G.NARENDRA CHETTY

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

W.P.No. 6982 of 2004 :

Between:

M/s Sri Satyasai Baba Traders, Nallacheruvu,

Nallacheruvu Mandal, Ananthapur District,

represented by its Proprietor Sri S.Rajagopal.

..... PETITIONER

AND

1 The Appellate Deputy Commissioner (CT), Kurnool

Division, D.No.43/253-D8, Sankalbagh,
N.R.Pet, Kurnool.

2 The Commercial Tax Officer, Kadiri, Ananthapur District.

3 The Commercial Tax Officer, Hindupur, Ananthapur

District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or Direction more particularly in the nature of Mandamus directing the First respondent, Appellate Authority to take on file the Appeal filed by the Petitioner relating to the Assessment Year 2000-2001 A.P.G.S.T. in S.No.267/2003-2004 and decide the same on merits without going into the question of limitation, or alternatively to direct the third respondent who is the present assessing authority of the Petitioner to re-open the assessment for the Assessment Year 2000-2001 A.P.G.S.T. and receive the Certificates to be filed by the Petitioner and grant necessary relief according to Law

Counsel for the Petitioner : MR.G.NARENDRA CHETTY

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

The Court made the following :

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

Writ Petition No.4649 of 2004 and Batch

ORDER : (Per Hon'ble Sri Justice S.Ananda Reddy)

This batch of writ petitions are filed by the dealers, who are registered under the provisions of both the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as 'the APGST Act') and the Central Sales Tax Act, 1956 (CST Act) and

carrying on the business, aggrieved by the action of the first appellate authority in refusing to entertain the appeals on the ground that they are barred by limitation. The petitioners are, therefore, seeking writ of mandamus directing the first appellate authority to take the appeals on file and decide the same on merits without going into the question of limitation or alternatively to direct the Assessing Officer to reopen the assessments and receive the certificates to be filed by the petitioners and grant necessary relief in accordance with law.

2. All the petitioners have filed their returns for different assessment years, in pursuance of which, assessments were made by the assessing authorities. As the claims with reference to certain exemptions were not accepted by the Assessing Officer, all the petitioners have filed appeals before the first appellate authority. But those appeals were rejected by the first appellate authority on the ground that the appeals filed were barred by limitation, as they are filed with delay of more than thirty days, and therefore, the first appellate authority has no power, under the provisions of the Act, to condone the delay. Hence the present writ petitions assailing the said orders of the first appellate authority.

3. Learned counsel for the petitioners contended that there was no justification for fixing the period of thirty days, for which the appellate authority was given the power to condone the delay in filing the appeals. The said restriction was imposed by way of an amendment to the provisions of Section 19 of the APGST Act, under which the first proviso was substituted by Act 8 of 1997 with effect from 4-1-1997. Prior to the said amendment, the appellate authority was having wide discretion without any limitation to condone the delay if he is satisfied that the dealer was prevented for sufficient reasons from filing the appeal within the period of limitation. The said powers were taken away by Act 8 of 1997, affecting the right of the petitioners. It is also contended that the wording of the first proviso shows that the appellate authority

may, within a further period of thirty days, admit the appeal if he is satisfied that the dealer had sufficient cause for not preferring the appeal within the stipulated period. It is contended that there is no specific exclusion of the Limitation Act, 1963, therefore, the provisions of the Limitation Act are applicable by virtue of Section 29 (2) of the said Act. If the provisions of the Limitation Act are made applicable, then it is for the appellate authority to condone the delay, without any restriction as was contained under the first proviso, in terms of Section 5 of the Limitation Act. Therefore, the learned counsel sought to contend that by virtue of the said specific provision of the Limitation Act, the provisions of the said Act are made applicable in the absence of special exclusion of the provisions of the APGST Act. Therefore, he contends that the impugned order passed by the first appellate authority refusing to condone the delay on the ground of lack of power is devoid of merit and is liable to be set aside. In support of the contentions, the learned counsel relied upon the following decisions.

Mangu Ram v. Delhi Municipality, **Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker**, **State of Orissa and others v. ION Exchange India Ltd.**, **Union of India v. Popular Construction Co.**, **Savitri Pandey v. Prem Chandra Pandey** and **Rekha Timber Depot v. D.C.T.O. (A.P.)**.

4. Alternatively, the learned counsel for the petitioners sought for a direction to the Assessing Officer to receive the certificates as contemplated under Rule 12 (7) of the Central Sales Tax Rules, to reopen the assessments and pass fresh assessments granting relief after considering the ‘C’, ‘F’ and ‘H’ forms that are being filed.

5. The learned Special Government Pleader for Commercial Taxes, on the other hand, opposed the contentions of the petitioners. According to him, the Amendment Act of 1997 was specifically brought in, to simplify and streamline the provisions relating to the admission of appeals after condonation of delay and when such

enactment was made by the Legislature with specific purpose, it is not open to the petitioners to contend that such provisions are causing hardship. According to the learned Government Pleader, the right of appeal is a Statutory benefit conferred on the dealers and such benefit is circumscribed by the provisions contained therein and it is not open to the dealers to contend that the conditions imposed while conferring the right of appeal could not be applied. He also contended that prior to the enactment of Act 8 of 1997, the appellate authority was having wide discretion without any limit to condone the delay. As the same was causing undue delay in filing the appeals as well as in disposal of the same, the Legislature thought to streamline and regulate the procedure by simplifying it and accordingly brought the Amendment Act. When the Legislature brought this enactment with specific intention of reducing the discretionary powers of the appellate authority, it is not open to the petitioners to contend that such reduction of the appellate powers are in any way illegal. In fact, it is contended by the learned Government Pleader that the Constitutional validity of the said amended provisions were already assailed before this Court and those provisions were upheld and when once such provisions were upheld as valid, it is not open to the petitioners again to raise another contention that the provisions of the Limitation Act are applicable which, if accepted, would nullify the Amendment Act, restoring to the very same old procedure giving unlimited discretionary power to the appellate authority to condone any amount of delay. He also contended that even in the absence of any specific exclusion, the scheme of the Act has to be looked into and if so looked, it would be clear that the Legislature brought the Amendment Act with a specific intention of excluding the application of any other period of limitation. He further contended that the Sales Tax is one of the modes of revenue to the State and if the proceedings are delayed for unlimited periods, it would cause serious impact on the State's Exchequer, and therefore, the Amendment Act was brought in not only to streamline the appeals, but also to simplify the procedural aspects. He contended that the very same judgments relied

upon by the learned counsel for the petitioners also make it clear that in order to consider the applicability of the Limitation Act, the scheme of the Act has to be looked into. It is further contended that the Act is self-contained Code, covering all the aspects and is being administered by the officers, who are instrumentalities of the State and not by the Courts. Therefore, there is no justification in seeking application of the provisions of the Limitation Act, and hence sought to dismiss the writ petitions.

6. From the above, the issue that falls for consideration is whether the provisions of the Limitation Act, 1963 would apply to the proceedings under the provisions of the APGST Act.

7. Though there is variation to the prayer in the writ petitions and the contentions advanced, we proceed to decide the issue as contended.

8. Before proceeding to consider the issue, it would be appropriate to refer to the relevant provision i.e., Section 19 of the A.P.General Sales Tax Act, which reads that '*any dealer objecting to any order passed or proceeding recorded by any authority under the provisions of this Act may, within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed.'* Proviso to Section 19 of the Act as it was prior to the Amendment Act and after the Amendment Act, reads thus.

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Before the Amendment Act :

Provided that the appellate authority may admit an appeal preferred after the period of thirty days aforesaid, if he is satisfied that the dealer had sufficient cause for not preferring the appeal within that period.

After the Amendment Act :

Provided that the appellate authority may within a further period of thirty days admit the appeal preferred after the period of thirty days, if he is satisfied that the dealer had sufficient cause for not preferring the appeal within that period.

9. A perusal of the above clearly shows that prior to the amended proviso, inserted by Act 8 of 1997, the appellate authority was given unlimited discretion to condone the delay, if he is satisfied that the dealer had sufficient cause for not preferring the appeal within a period of thirty days. But this unlimited discretionary power conferred on the appellate authority was restricted, confining such power to condone the delay upto a maximum period of thirty days by Act 8 of 1997. Even in such case, the appellate authority is entitled to admit the appeal if he is satisfied that the dealer had sufficient cause for not preferring the appeal within the prescribed limit. Even if the appellate authority is satisfied that the dealer was prevented for sufficient cause, it has no power to condone the delay beyond the period of thirty days. It would be proper to refer to the Statement of Objects and Reasons stated while passing the amended enactment. In fact, this amended enactment covers many other issues covering different provisions of the Act, which was taken up on the representations of various Traders Associations. While considering the said representations, the Commissioner of Commercial Taxes suggested certain further amendments to the Act with a view to further simplify the procedure and streamline the provision relating to admission of appeals after condonation of delay and to allow self-assessment of dealers with a turnover of less than
Rs.10-00 Lakhs, therefore, the amended enactment was brought.

10. From the above, it is clear that this enactment was intended to streamline and simplify the procedure relating to the admission of appeals after condonation of

delay. From the provisions existing prior to the enactment and after the enactment of the Amendment Act, it is clear that the Legislature had intentionally brought the new provisions so as to curtail the unlimited discretionary powers of the appellate authority to condone the delay.

11. In the light of the above position, if the provisions of the Limitation Act are made applicable by virtue of Section 29 (2), the result would be that the provisions of the Amendment Act would become otiose and the old position would be restored, restoring the unlimited discretionary powers of the appellate authority. We do not think that the Courts are empowered to create such a situation, especially when the Constitutionality of the amended provisions in question are already upheld by this Court.

12. Coming to the contention of the learned counsel that by virtue of Section 29 (2) of the Limitation Act, the provisions of Sections 4 to 24 of the said Act are made applicable, and if so, Section 5 has to be applied for condoning the delay. It would be appropriate to refer to Section 29 (2) of the Limitation Act, 1963, which reads as under.

> **Sec.29 Savings:**
>
> **(2)** Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

13. From the above provision, it is clear that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the

period prescribed by the schedule under the Limitation Act, the provisions of Section 3 of the Limitation Act shall apply, as if such period were the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as and to the extent to which they are not expressly excluded by such special or local law. Relying upon the said provision, it was contended that unless there is a specific exclusion under the provisions of the Act in question, the application of the provisions, referred to above, would not be excluded. Learned counsel for the petitioners also sought to contend that if the intention of the Legislature is to exclude the applicability of the provisions of the Limitation Act, the wording of the provision would have been different. In support of it, the learned counsel referred to the proviso to Section 256 (1) of the Income Tax Act, 1961, which reads as under.

> Provided that the appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

14. According to the learned counsel, under Section 256 (1) of the Income Tax Act, the assessee or the Commissioner, within sixty days from the date of the service of the order passed by the appellate Tribunal, make an application requiring the Tribunal to refer to the High Court, any question of law arising out of the said order. But the Tribunal is given the discretion to accept such an application within a further period of thirty days. When the Legislature intended for non-application of the provisions of the Limitation Act or to give any further discretion, it was so worded to convey a negative sense denying the power to the Tribunal. According to the learned counsel, in the present provision, the wording is not such as to convey such express denial of the power to the appellate authority. Therefore, the provisions of

the Limitation Act have to be applied.

15. In order to appreciate the said contention, it would be appropriate to consider the judgments relied upon.

16. In **Mangu Ram's**[1] case the Apex Court was considering the applicability of the provisions of Section 5 of the Limitation Act, 1963. The appellant Mangu Ram was a partner in the firm
M/s. Ram Pershad Gondamal, which was carrying on the business in the purchase and sale of Phool Gulab. The Food Inspector of Municipal Corporation of Delhi purchased two samples and after analysis, as the samples were found to be adulterated, prosecution was launched against both the partners and the firm in respect of two samples under the provisions of the Prevention of food Adulteration Act, 1954. Basing on the report of the Director, Central Food Laboratory for Analysis, the Judicial Magistrate, though found that the samples were adulterated, but as those samples were purchased by the firm from
M/s. Venkateshwara and Company, which was the manufacturing concern, held that the accused were entitled to the benefit of Section 19 (2) of the Act, and accordingly acquitted them. The Municipal Corporation of Delhi made an application for Special Leave to appeal from the order of acquittal under sub-section (4) of Section 417 of the Code of Criminal Procedure. But, however, as there was a delay of two days, an application for condonation of delay, invoking the provisions of Section 5 of the Limitation Act, 1963, was filed. The Delhi High Court condoned the delay and granted Special Leave to appeal against the order of acquittal. The High Court denied the benefit of Section 19 (2) and thereafter basing on the certificate issued by the Director of Food Laboratory, further as there was some amendment as to the nature of adulteration, the High Court imposed only fine in respect of one sample, as the substance allegedly used for adulteration was subsequently came to be permitted. But with reference to the other sample, the partner of the firm was

sentenced to suffer six months rigorous imprisonment and also a fine of Rs.1,000/-, while the firm was sentenced to pay the fine. Hence, further appeal to the Apex Court. Before the Apex Court, the only argument that was pressed was that the time limit of sixty days prescribed under

sub-section (4) of Section 417 of the Act is mandatory and inexorable time limit, which could not be relieved against or relaxed, and it excluded the applicability of Section 5 of the Limitation Act, 1963. For the appellants, reliance was placed on the decision of the Apex Court in the case of **Kaushalya Rani v. Gopal Singh (AIR 1964 SC 260)** where almost under identical circumstances, the Apex Court held that the provisions of Section 5 has no application for enlargement of the period of limitation. But the said judgment was rendered under the provisions of the Limitation Act, 1908. The Apex Court distinguished the decision on the ground that there is a substantial departure under the provisions of the Limitation Act, 1963 from that of the provisions of 1908 Act. It was pointed out that under the provisions of 1908 Act, by virtue of Section 29 (2)(b) of the Limitation Act, only Sections 4, 9 to 18 and 22 alone were made applicable. But under 1963 Act, by virtue of Section 29 (2), the provisions of Sections 4 to 24 were made applicable, which includes Section 5 of the Limitation Act. Therefore, the Apex Court was of the opinion that the ratio laid down in **Kaushalya Rani's** case is not applicable to the present case, and accordingly dismissed the appeal.

17. In **Mukri Gopalan's**[2] case the Apex Court had an occasion to consider the applicability of the Limitation Act to the proceedings under the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short 'Rent Act'). In this case, the respondent filed a rent control petition before the Rent Control Court seeking eviction of the appellant/tenant on the ground of default in payment of rent and bonafide need for the purpose of his son. The Rent Control Court, exercising its

powers under Section 11 of the Rent Act, passed order for possession against the appellant on 28-10-1993. The appellant filed an appeal before the appellate authority. As there was a delay in filing the appeal, an application for condonation of delay was filed. The appellate authority dismissed the appeal as barred by time, as the appellate authority was of the opinion that Section 5 of the Limitation Act has no application, as decided by the High Court of Kerala, according to which the appellate authority is *persona designata* and it has no power to condone the delay in filing the appeal. The said order was confirmed by the High Court in a revision petition, hence further appeal before the Apex Court. Before the Apex Court it was contended that majority view of the Kerala High Court in **Jokkim Fernandez v. Amina Kunhi Umma (AIR 1974 Kerala 162)** that

Section 29 (2) of the Limitation Act cannot apply to the proceedings before the appellate authority under Section 18 of the Rent Act, was not correct. The Apex Court, after referring to the provisions of the Rent Act and the authority designated to deal with the proceedings, concluded that the District Judge, who was exercising the powers of an appellate authority under Section 18 of the Rent Act, is not a *persona designata,* as the powers were not conferred on any individual name, but conferred on the District Judges, discharging the functions in the respective Districts. With reference to the contention as to the application of the provisions of the Limitation Act, 1963 the Apex Court referred to the provisions of Section 29 (2) and in order to import the machinery of the provisions contained in Sections 4 to 24 of the Limitation Act, the following two requirements have to be satisfied by the authority invoking the provision.

i. There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.

ii. The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act.

If the aforesaid two requirements were satisfied, the consequences contemplated by Section 29 (2) would automatically follow. The consequences are (1) in such a case, Section 3 of the Limitation Act would apply as if the period prescribed by the special or the local law was the period prescribed by the Schedule; (2) for determining any period of limitation prescribed by such special or local law for a suit, appeal or application, all provisions containing Sections 4 to 24 (inclusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law. Applying the said principles, the Apex Court held that it cannot be disputed that Kerala Rent Act is a Special Act or a local law. It also cannot be disputed that it prescribes for appeal under Section 18, a period of limitation, which is different from the period prescribed by the schedule, as the schedule to the Limitation Act does not contemplate any period of limitation for filing appeal before the appellate authority under Section 18 of the Rent Act or in other words it prescribes nil period of limitation for such an appeal. It is now well settled that in a situation where a period of limitation is prescribed by a special or local law for an appeal or application and for which there is no provision made in the schedule to the Act, the second condition for attracting

Section 29 (2) would get satisfied. The Apex Court, therefore, held that once the aforesaid two conditions are satisfied, Section 29 (2) on its own force will get attracted to the appeals filed before the appellate authority under Section 18 of the Rent Act. Hence Section 5 of the Limitation Act is applicable to the appeals filed before the appellate authority under Section 18 of the Rent Act. The Apex Court while deciding the above appeal, distinguished its earlier decision in the case of **CST v. Parson Tools and Plants {(1975) 4 SCC 22}** on the ground that the scope of Section 29 (2) was not considered in the above decision. Holding so the order of the High Court was set aside and the matter was remanded to the appellate authority.

18. At this stage it would be appropriate to refer to a decision of the Supreme Court in **Hukumdev Narain Yadav v. L.N. Mishra**, which was referred to and even relied upon by the Apex Court in **Union of India v. Popular Construction Co.**[4] . In **Hukumdev Narain Yadav's**[7] case, the dispute arose under the Representation of the People Act, 1951 with reference to the limitation for filing an Election Petition. In that case, the respondent was declared elected as Member of the Lok Sabha in a By-election on 2-2-1972. The last date of limitation for filing Election Petition was March 18, 1972 (Saturday). The petition was actually presented on March 20, 1972 (Monday) on the plea that an Election Petition could not be filed on Saturday when the Judges of the High Court do not sit and since March 19, 1972 was Sunday, therefore, the petition was within time. The said Election Petition was dismissed by the High Court being time barred. In the appeal one of the issues raised was as to the application of the provisions of Sections 4 to 24 of the Limitation Act by virtue of Section 29 (2) of the said Act. The Apex Court has noted the modification that was brought in

Section 29 (2) of 1963 Act from that of the 1908 Act, and thereafter considered the meaning of the words *"expressly excluded"*. The relevant observations are as under.

> "……As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act (Representation of the People Act), and the nature of the remedy provided therein are such that the Legislature intended it to be a complete Code by itself, which alone should govern the several matters provided by it. If on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and the scheme of the special law

exclude their operation….."

The Court also took into account the changes that were brought in the provisions of the Act and the relevant portion of it reads as under.

> "It is also significant that delay in the presentation of election petition under the repealed Section 81 could be condoned by the Election Commission in its discretion under the proviso to the repealed Section 85 of the Act. But there was nothing in Section 85 which permitted the Election Commission to condone the noncompliance of provisions of Section 117 of the Act. When the Act was amended and the jurisdiction was given to the High Court to entertain and try election petitions, a provision similar to the proviso for condoning delay was not enacted. This omission definitely expresses Parliament's intention not to confer the power to condone any delay in the presentation of the petition. The whole object of the amendment in 1966 was to provide a procedure for a more expeditious method of disposal of election disputes, which experience had shown had become dilatory under the former procedure where election trials were not concluded even after five years when the next elections were held, notwithstanding the fact that every petition was enjoined to be tried as expeditiously as possible and endeavour was required to be made to conclude the trial within six months from the date on which the election petition was presented to the High Court for trial."

In view of the above observations, the Apex Court held that the provisions of the Limitation Act are not applicable, and accordingly confirmed the dismissal order of the High Court.

19. In **Popular Construction Company's**[4] case the Apex Court had an occasion to consider the applicability of the provisions of the Limitation Act to the proceedings under the Arbitration and Conciliation Act, 1996. In this case, the Arbitrator passed an award on 29-8-1998. Under the impression that the Arbitration Act, 1940 applies, the Arbitrator forwarded the original award to the appellant with a request to file the award in the High Court of Bombay so that a decree could be passed in terms of the

award under the provisions of the Arbitration Act, 1940. The award was accordingly filed by the appellant before the Bombay High Court on 29-3-1999. The appellant filed an application on 19-4-1999 challenging the award under Section 30 read with Section 16 of the Arbitration Act, 1940. Subsequently, the application was amended by inserting the words '*Arbitration and Conciliation Act, 1996*' in the place of '*Arbitration Act, 1940*'. The said application was dismissed by the learned single Judge on 26-10-1999 on the ground that it was barred by limitation under Section 34 of the 1996 Act. The Division Bench rejected the appeal and upheld the findings of the learned single Judge. In the appeal before the Apex Court it was contended that Section 29 (2) of the Limitation Act makes the provisions of Section 5 of the Limitation Act applicable to the special laws like 1996 Act, since 1996 Act itself did not expressly exclude its applicability and that there was sufficient cause for the delay in filing the application under Section 34. The said contention was opposed by the respondents contending that Section 34 plainly and expressly excluded the operation of Section 5 of the Limitation Act. The Apex Court after considering the scope of Section 29 (2) and the applicability of the provisions contained in Sections 4 to 24 of the Limitation Act, and after reviewing the case law, concluded that the history and scheme of 1996 Act supports the conclusion that the time limit prescribed under Section 34 to challenge the award is absolute and unextendable by the Court under Section 5 of the Limitation Act. The Court after referring to the Arbitration and Conciliation Bill, 1995, which preceded the 1996 Act, noted that one of its main objectives was the need to minimise the supervisory role of Courts in the arbitral process. The Apex Court also referred to the term 'express exclusion' which may follow from the scheme and object of the special or local law by referring to the following observations in the case of **Hukumdev Narain Yadav v. Lalit Narain Mishra {1974 2 SCC 133}.**

"Even in a case the special law does not exclude the provisions

> of Sections 4 to 24 of the Limitation Act, by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."

The Apex Court also noted the specific words contained in proviso to Section 34 (3), which provides that an application contemplated under the said provision be made within a period of three months, which may be entertained within a further period of thirty days but not thereafter. Therefore, both on the wording of the said provision as well as taking into account the scheme of the Act, the Apex Court held that the provisions of Section 29 (2) and consequently Sections 4 to 24 of the Limitation Act are not applicable to the proceedings under the 1996 Act.

20. In **CST v. Parson Tools and Plants** a Bench of three learned Judges of the Apex Court had an occasion to consider the application of the provisions of the Limitation Act with reference to the proceedings under the Uttar Pradesh Sales Tax Act, 1948 and the Rules. In that case, the assessee was assessed for the assessment years 1958-59 and 1959-60, against which two separate appeals were filed before the appellate authority. The said appeals were dismissed for default in terms of Rule 68 (5) of the Uttar Pradesh Sales Tax Rules. Against the said order applications were filed under Rule 68 (6) for setting aside the said dismissal order and for readmission of the appeal. The said applications were dismissed on October 20, 1964. Against the orders of dismissal of appeals, on December 16, 1964 the assessee filed two revision petitions under Section 10 of the Sales Tax Act before the revisional authority [Judge (Revisions) Sales Tax]. Having been filed the revision petitions more than eighteen months after the dismissal of the appeals, the assessee also filed two applications for exclusion of the time that was spent during the pendency of the proceedings under Rule 68 (6) by applying Section 14 of the Limitation Act. The revisional authority accepted the said claim of

the assessee and held that the revision petitions were within the time. Thereafter, at the instance of the Commissioner of Sales Tax, the question as to the application of Section 14 of the Limitation Act was referred. The said reference was heard by a Full Bench of three learned Judges. By a majority of two accepted the claim of the assessee that the period spent in prosecuting the application under Rule 68 (6) has to be excluded by application of the principle underlined in Section 14 (2) of the Limitation Act. The third learned Judge, however, was of the view that the [Judge (Revisions) Sales Tax] while hearing the revisions under Section 10 of the Uttar Pradesh Sales Tax Act, does not act as a Court but only as a Revenue Tribunal. Hence the provisions of the Indian Limitation Act cannot apply to the proceedings before him. If the Limitation Act does not apply, then either
Section 29 (2) or Section 14 (2) of the Limitation Act will apply to the proceedings before him.

The Apex Court while hearing the appeal against the above order agreed the contentions that the authorities under the Sales Tax Act are not the Courts within the contemplation of
Section 14(2) of the Limitation Act, relying upon its own judgment in **Jagannath Prasad v. State of Uttar Pradesh {AIR 1963 SC 416}.** The Court also referred to the observations made in the Larger Bench decision in **Ujjam Bai v. State of Uttar Pradesh {AIR 1962 SC 1621}**, which reads as under.

> "The Taxing authorities are instrumentalities of the State. They are not a part of the legislature, nor are they a part of the Judiciary. Their functions are the assessment and collection of taxes and in the process of assessing taxes, they follow a pattern of action which is considered judicial. They are not thereby converted into courts of civil judicature. They still remain the instrumentalities of the State and are within the definition of 'State' in Article 12."

The Court thereafter referred to the provisions of Section 10 and sub-section

(3-B), which prescribes the period of limitation for filing the revision. As per the said sub-section, the application under the revising authority shall be made within one year from the date of service of the order complained of, but the revising authority may, on proof of sufficient cause entertain an application within a further period of six months.

After considering the scope of the above provisions, it was observed.

> "The three stark features of the scheme and language of the above provision unmistakably show that the Legislature has deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act, except to the extent and in the truncated form embodied in sub-section (3-B) of Section 10 of the Sales Tax Act. Delay in disposal of revenue matters adversely affects the steady inflow of revenues and the financial stability of the State. Section 10 is therefore designed to ensure speedy and final determination of fiscal matters within a reasonably certain time-schedule."

It is further observed:

> "Be that as it may, from the scheme and language of Section 10, the intention of the legislature to exclude the unrestricted application of the principles of Sections 5 and 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the legislature did not, after due application of mind, incorporate in the Sales Tax Act, cannot be imported into it by analogy. An enactment being the will of the legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded 'according to the intent of them that made it'. 'The will of the legislature is the supreme law of the land and demands perfect obedience'. 'Judicial power is never exercised', said Marshall, C.J. of the United States, 'for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law'.
>
> If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and

> unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so 'would be entrenching upon the preserves of legislature', the primary function of a Court of law being *jus dicere* and not *jus dare*.
>
> In the light of what has been said above, we are of the opinion that the High Court was in error in importing whole hog the principle of Section 14(2) of the Limitation Act into Section 10(3-B) of the Sales Tax Act."

21. In the case of **Commissioner of Sales Tax v. Madan Lal Das & Sons** another Bench of three learned Judges of the Apex Court considered the application of the provisions of Section 12(2) of the Limitation Act, 1963 for exclusion of the period spent for obtaining a certified copy of the order against which an appeal was filed. The dispute relates to the assessment year 1960-61. An appeal filed by the respondent against the order of the Sales Tax Officer was disposed of by the Assistant Commissioner (Judicial), Sales Tax, Bareilly. A copy of the order was served on the respondent-dealer on August 2, 1965. The respondent, however, lost the said copy served upon him, therefore, made an application for obtaining another copy of the order on June 15, 1966. The copy was ready on August 17, 1967 and delivered to the respondent on August 18, 1967. Thereafter, a revision was filed under Section 10 of the Act on September 9, 1967. The dealer claimed exclusion of the period spent for obtaining the certified copy of the order under
Section 12 (2) of the Limitation Act. This claim was accepted by the revisional authority. But, however, at the instance of the Department, the question was referred to the High Court for its opinion, which answered the question in favour of the respondent. Hence the appeal before the Apex Court. Though, for the department, it was contended that the provisions of the Limitation Act had no application, but however, the Court did not accept the said contention by referring to the provisions of sub-section (2) of Section 29 of the Limitation Act, 1963 and also relying upon the

judgment of the Judicial Committee in the case of **J.N.Surty v. T.S.Chettyar {(1928) 55 Indian Appeals 161 (P.C.)}**. However, this Bench did not consider the earlier judgment rendered by a Bench of three learned Judges of the same Court in the case of **Parson Tools and Plants**[8] .

22. A Bench of two learned Judges of the Apex Court has reviewed the case law regarding the applicability of the provisions of the Limitation Act in terms of Section 29(2) of the said Act in **Gopal Sardar v. Karuna Sardar** with reference to the West Bengal Land Reforms Act, 1955. The issue was whether the limitation prescribed under Section 8 for making an application gets enlarged by virtue of the application of the provisions of the Limitation Act. The Court reviewed all its earlier judgments starting from **Kaushalya Rani v. Gopal Singh (AIR 1964 SC 260)** and concluded as under.

> "……Considering the scheme of the Act being a self-contained code in dealing with the matters arising under Section 8 of the Act and in the light of the aforementioned decisions of this Court in the case of **Hukumdev Narain Yadav, Anwari Basavaraj Patil** and **Parson Tools** it should be construed that there has been exclusion of application of Section 5 of the Limitation Act to an application under Section 8 of the Act. In view of what is stated above, the non-applicability of Section 5 of the Limitation Act to the proceedings under Section 8 of the Act is certain and sufficiently clear. Section 29(2) of the Limitation Act as to the express exclusion of Section 5 of the Limitation Act and the specific period of limitation prescribed under Section 8 of the Act without providing for either extension of time or application of Section 5 of the Limitation Act or its principles can be read together harmoniously. Such reading does not lead to any absurdity or unworkability or frustrating the object of the Act. At any rate, in the light of the three-Judge Bench decision of this Court in **Hukumdev Narain Yadav** case and subsequently followed in **Anwari Basavaraj Patil** case even though special or local law does not state in so many words expressly that Section 5 of the Limitation Act is not applicable to the proceedings under those Acts, from the scheme of the Act and having regard to various provisions such express exclusion could be gathered……"

23. In **Rekha Timber Depot's**[6] case, a Division Bench of this Court, to which one of us (SAR,J) is a member, had an occasion to consider the Constitutional validity of the proviso to Section 19(1) of the Act. This Court upheld the validity of the said proviso under which the original discretionary power of the appellate authority was curtailed to thirty days under Section 19(1) of the Act and sixty days in the case of appeal to the Sales Tax Appellate Tribunal under Section 21(2) of the Act. In the said writ petition, the stand of the Revenue was that the unlimited discretion conferred on the authorities was being exercised resulting in abnormal delays and prolonged litigation, and as such, it was thought fit that such unlimited discretionary power be restricted and accordingly the amendment Act came to be enacted. This Court, having found that there are no Constitutional infirmities in the Amendment Act, upheld the same.

24. In the case of **ION Exchange India Ltd.**[3] the Apex Court was considering the scope of Section 24 (7) of the Orissa Sales Tax Act, 1947, as per which the amount due in accordance with the order of the Tribunal shall not be stayed pending disposal of any application or reference. However, it was held that such provision cannot be a bar to the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. But at the same time, the Apex Court agreed that while exercising the power under Article 226 of the Constitution of India, the High Court should keep in mind the Legislative intention indicated by
sub-section (7) of Section 24 and should respect it. Only in exceptional cases, should the Court interfere and not as a matter of course.

25. In the case of **Savitri Pandey**[5] the Apex Court was considering the adequacy or otherwise of the period of limitation prescribed for filing appeal under the provisions of the Hindu Marriage Act. Under Section 25(4) of the said Act, a period of thirty days

was prescribed for preferring an appeal. While considering the said contention the Apex Court, taking into account the financial position of the parties, the geographical conditions and other related factual aspects, held that the period of thirty days was inadequate and the relevant observations are as under.

> "At this stage we would like to observe that the period of limitation prescribed for filing the appeal under Section 28(4) is apparently inadequate which facilitates the frustration of the marriages by the unscrupulous litigant spouses. In a vast country like ours, the powers under the Act are generally exercisable by the District Court and the first appeal has to be filed in the High Court. The distance, the geographical conditions, the financial position of the parties and the time required for filing a regular appeal, if kept in mind, would certainly show that the period of 30 days prescribed for filing the appeal is insufficient and inadequate. In the absence of appeal, the other party can solemnise the marriage and attempt to frustrate the appeal right of the other side as appears to have been done in the instant case. We are of the opinion that a minimum period of 90 days may be prescribed for filing the appeal against any judgment and decree under the Act and any marriage solemnised during the aforesaid period be deemed to be void. Appropriate legislation is required to be made in this regard. We direct the Registry that the copy of this judgment may be forwarded to the Ministry of Law & Justice for such action as it may deem fit to take in this behalf."

26. If we examine the relevant provisions of the Act, in the light of the decisions referred to earlier, though the provisions of the Act does not contain any express words excluding the applicability of the provisions of the Limitation Act, but it has to be considered in the light of the scheme of the Act. First of all, the Andhra Pradesh General Sales Tax, 1957 is a self-contained Code providing remedies for all possible contingencies that would arise in the administration of the provisions of the said Act *viz.,* the Act provides to enforce the rights, forum is provided, procedure is prescribed, remedies including appeals and revisions are provided, penalties are indicated for non-compliance of the provisions as well as the orders passed under the provisions of the Act. Further period of limitation is also specifically prescribed for filing of the returns, appeals, revisions etc. Further, the very object of enactment

of the Amendment Act is to curtail the discretionary powers vested in the appellate authorities as per the existing provisions. Prior to the Amendment Act, both the first appellate authority as well as the second appellate authority were having unlimited discretionary power to condone the delay, if the authorities satisfied that the dealer was prevented from presenting the appeal within the time prescribed. The Legislature noted that the said unlimited discretionary powers conferred on the authorities had resulted in prolonged litigation thereby effecting the collection of the revenue to the State. In the light of the state of affairs, in order to streamline and simplify the filing and disposal of the appeals before the appellate authorities, the Amendment Act has been brought into existence, under which the unlimited discretionary power vested in the appellate authorities were curtailed and such power of condonation of delay is restricted to a period not exceeding thirty days in the case of the first appellate authority, and not exceeding sixty days in the case of the second appellate authority (Tribunal) if satisfied that the dealer had sufficient cause for not preferring the appeal within the period. The dealers assailed the Constitutional validity of the above provisions unsuccessfully.

27. Further, though it was contended by the dealers that the period of thirty days prescribed under the Statute to prefer an appeal as well as a further period of thirty days for condonation of delay before the appellate authorities is adequate by relying upon the judgment of the Apex Court in the case of **Savitri Pandey**[5], but the factors that were taken into account in the above said judgment are totally different from that of the facts in the present case. The appeals are to be filed before the appellate Deputy Commissioner, who are available at the Divisional levels, and therefore, there is no much difficulty for the dealers to prefer an appeal unlike in the case of **Savitri Pandey**[5] where appeals are to be filed only in the High Court, which is located, as noticed by the Apex Court, far away from the Court which passed the judgment and decree.

Under the above circumstances, we do not find any merit in the contention of the dealers as to the application of the provisions of the Limitation Act.

28. Coming to the alternative contention that the dealers are entitled to file the certificates/Form 'C', 'F' and 'H' even after the completion of the assessment, the learned counsel for the petitioners relied upon a decision of the Madras High Court in **Vispro Foundry Engineers Ltd. v. C.T.O. (Mad.)** where a learned single Judge had an occasion to consider the similar claim. The learned single Judge accepted the claim of the dealer holding that the petitioner therein was entitled to seek reopening of the final assessment, which was made levying a higher rate of tax than that was prescribed under Section 8 (1) of the Act in the absence of 'C' Forms. The learned single Judge relied upon a Full Bench decision of the same Court in **State of Tamil Nadu v. Arulmurugan and Company and Co.**, and accordingly a direction was given to the Assessing Officer to reopen the assessment and consider the claim of the dealer after accepting the 'C' Forms. Hence it would be appropriate to refer to the said Full Bench decision of the Madras High Court.

29. The scope of the proviso to Section 8(4) and proviso to
Rule 12(7) of the Central Sales Tax Act and the Rules fell for consideration by the Full Bench of the Madras High Court in **Arulmurugan and Company's**[12] case. In fact, the issue that was referred to the Full Bench was whether the appellate Tribunal had the jurisdiction to receive 'C' Forms in terms of the above referred provisions. The scope of the reference to the Full Bench is only to that extent and the Full Bench answered the said question relying upon the observations of the Supreme Court in **Commissioner of Income Tax v. Mc.Millan & Co. {(1958) 33 ITR 182 (SC)}** which was rendered under the provisions of the Income Tax Act with reference to the powers of the Assessing Authority whether the same could be exercised by the appellate authority or not? The Apex Court, in that case, held "*that while the decision as to the method of accounting is to be arrived at, in the first*

instance, by the Income Tax Officer, the power exercisable by the Income Tax Officer is not clothed with any finality, and, in reviewing the order of the Income Tax Officer, the Appellate Assistant Commissioner can exercise the same powers which the Income Tax Officer could himself exercise."

Relying upon the above observations of the Apex Court, the Full Bench answered the issue in favour of the assessee in the following words.

> "……What we are asked to consider, and what we have been engaged in discussing so far, is whether an appellate authority has the same power as the assessing authority to allow further time for accepting C forms, and not how and by what process the assessing authority itself could exercise the power after the completion of the assessment."

The Full Bench further held as under.

> "……we hold that the power to extend the time for filing C form declarations, which the proviso to Section 8(4) of the Central Sales Tax Act confers, is available to be exercised by every authority who has jurisdiction to deal with the assessment in one way or another, and at one time or another, and is not confined strictly to the assessing authority alone, as the prescribed authority."

30. We may also further notice that though the Full Bench was not addressed with the issue whether the assessing authority has got the power to reopen the assessment at the requisition of the assessee on filing 'C' forms, it however, observed.—

> "Where the assessing authority is satisfied, in a given case, about the existence of sufficient cause, it must necessarily be followed up by appropriate action, such as reopening the assessment already completed. Perhaps the requisite corrective action can be taken by invoking the assessing authority's statutory power of rectification of mistakes."

In our opinion, the said observations are only obiter dicta and cannot be relied upon either by the learned Single Judge, who decided the case in **Vispro Foundry Engineers Ltd.**[11] nor can be relied upon as a binding precedent. Further, in any case, even if such power is vested with the Assessing Officer, it is for the dealers to approach the Assessing Authority and they cannot directly approach this Court under Article 226 of the Constitution of India seeking such relief. Insofar as the rights of the dealers to file such declaration during the pendency of the appeals as was held by the Full Bench of the Madras High Court, there cannot be any dispute, as it was rightly decided that the appeals are continuance of the original assessment proceedings. Therefore, there is every scope for the dealers during the pendency of the appellate proceedings to avail the opportunity by filing the requisite forms as are contemplated under proviso to Section 8(4) read with Rule 12(7) of the Act and the Rules. Therefore, we do not find any merit to grant the alternative relief sought for.

31. Under the above circumstances, all the writ petitions are dismissed. No costs.

_____

(BILAL NAZKI, J)

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(S.ANANDA REDDY, J)

Date: 20-1-2005.

Note: Mark L.R. Copies.

(bo)

Msr.

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THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.4649 of 2004 and Batch

Dt: 20-1-2005.

(Msr)